

**United States Department of Labor
Employees' Compensation Appeals Board**

ALBERT T. RAIIO, JR., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Phoenix, AZ, Employer**

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**Docket No. 05-1273
Issued: October 12, 2005**

Appearances:

*John Eiler Goodwin, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 24, 2005 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated and finalized March 7, 2005, finding that he had not established a recurrence of disability or that he sustained a shoulder injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant has established that he sustained a recurrence of disability in the performance of duty commencing December 1, 2003 causally related to an accepted lumbar strain sustained on March 26, 1999; and (2) whether appellant established that he sustained a shoulder injury as a result of the accepted March 26, 1999 injury.

FACTUAL HISTORY

This is the fourth appeal before the Board in this case. By decision issued January 13, 2003,¹ the Board affirmed a March 14, 2002 decision of the Office finding that appellant had no

¹ Docket No. 02-1546 (issued January 13, 2003).

more than a 30 percent permanent impairment of his right upper extremity due to carpal tunnel syndrome, for which he received a schedule award issued June 25, 1996. Appellant filed a second appeal with the Board on August 4, 2003 from a June 9, 2003 decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review, affirming the termination of his medical benefits on the grounds that he no longer had residuals of accepted occupational conditions. By order issued December 3, 2003,² the Board remanded the case to the Office for reconstruction of the record. Following remand, the Office reissued a decision on December 23, 2003. On the third appeal, by decision issued August 19, 2005,³ the Board affirmed the December 23, 2003 decision, affirming the termination of benefits effective July 29, 2002 on the grounds that his accepted cervical, occipital, thoracic and lumbar strains, consequential duodenal ulcer and bilateral temporomandibular joint (TMJ) syndrome, had ceased without residuals. The law and facts of the case as set forth in the previous decision are hereby incorporated by reference.⁴

The Office accepted that on March 26, 1999 appellant, then a 47-year-old mail handler on limited duty, sustained a traumatic lumbar strain when struck in the back by a mail cage. Appellant also asserted that the impact knocked him into a guard rail and that he had a "back muscle spasm low back across shoulders." The Office did not accept a shoulder injury. Appellant's claim was closed on September 27, 2001 as he returned to full duty.

Appellant submitted reports dated from April 2, 1999 to December 22, 2002 by Dr. David A. Suber, an attending Board-certified neurologist and psychiatrist, who prescribed duty restrictions due to neck and back pain. He noted the onset of "neck and shoulder pain" in May 2002. In a May 10, 2002 letter, Dr. Suber noted appellant's "history of lumbar, cervical and shoulder strains and sprain injuries with an underlying fibromyositis disorder. As such [appellant] is suffering from the long-term effects of a slowly developing degenerative joint disease." Dr. Suber also diagnosed fibromyositis, chronic low back pain and mild scoliosis.⁵

On February 17, 2004 appellant filed a notice of recurrence of disability (Form CA-2), asserting that beginning on December 1, 2003, he sustained back pain radiating into the lower extremities due to the March 26, 1999 injury and having to process an increased volume of mail in December 2003. He was working restricted duty at the time of the claimed recurrence of disability. Appellant stopped work on approximately March 12, 2004 and did not return. In an associated letter, he alleged that the March 26, 1999 incident caused an injury "across [his] shoulders and upper extremities."

² Docket No. 03-2027 (issued December 3, 2003).

³ Docket No. 05-334 (issued August 19, 2005).

⁴ The Office accepted occipital, cervical, lumbar and thoracic strains and TMJ syndrome under File No. 13-0843080. The Office accepted right carpal tunnel syndrome under File No. 13-0915020 and left carpal tunnel syndrome under File No. 13-2012092. These claims are not before the Board on the present appeal. The claim currently before the Board involves a March 26, 1999 traumatic lumbar strain and consequential duodenal ulcer, accepted under File No. 13-1185767.

⁵ In a January 30, 2004 form report, Dr. Suber noted work restrictions due to right carpal tunnel syndrome.

In a February 20, 2004 letter, the Office advised appellant of the type of additional evidence needed to establish his claim for recurrence of disability, including a rationalized report from his physician addressing the causal relationship between his current condition and the original injury.

In a February 18, 2004 report, Dr. Suber stated that “[a]ccording to the best of the reports available, [appellant] injured his shoulders and back at work on March 26, 1999.” He opined that based on radiographic studies, the injury “exacerbated a preexisting ... spondylosis, spinal stenosis and degenerative joint disease, along with discogenic disease.” In a February 27, 2004 slip, Dr. Suber released appellant to limited duty with no wrist flexion or prolonged standing.

By decision dated March 22, 2004, the Office denied appellant’s claim for recurrence of disability on the grounds that he submitted insufficient medical evidence to establish that his condition on and after December 1, 2003 was causally related to sequelae of the March 26, 1999 injury.

Appellant requested an oral hearing, held November 16, 2004. He testified that in December 2003, he was on limited duty with restrictions against lifting more than 30 pounds. Appellant alleged that his work hours increased in December 2003, due to the additional mail volume during the holiday season. This increase in work duties, including lifting more trays of mail than usual, caused back pain radiating into both legs. Appellant explained that he was also off work due to injuries under a separate compensation claim. He again asserted that he sustained a shoulder injury in the March 26, 1999 incident.

After the hearing, appellant submitted additional medical evidence regarding the claimed recurrence of disability and shoulder injury.⁶

In chart notes from March 2002 to November 2004, Dr. Bradley Downing, an attending osteopath, diagnosed spinal stenosis causing chronic pain throughout the spine with radiation into the extremities. He noted work restrictions in September 2004 against prolonged standing and walking.

In an August 13, 2003 evaluation, Dr. J. Carvel Jackson, an attending osteopathic physician Board-certified in physiatry, noted a history of the 1987 accepted occipital injury. On examination, Dr. Jackson found a painful range of shoulder motion without objective abnormality. He diagnosed “[m]ultiple myalgias and arthralgias with underlying central cervical and lumbar acquired stenosis” and chronic pain syndrome.

⁶ Appellant also submitted medical reports dated from September 23, 1987 to August 13, 2003, that did not address either his medical condition on and after December 1, 2003 or his allegations concerning a shoulder injury. The employing establishment submitted a February 7, 2005 surveillance report from its inspection unit, noting that appellant was observed from July 19 to August 18, 2004. The employing establishment asserted that he was able to “enter/exit a car, drive a car, bend, twist, reach above his shoulder, pull/push, bend/stoop and lift/carry items ... or various weights and bulkiness,” as well as perform fine manipulation to clean his car windows, pump gas and put on his seat belt.

In a March 12, 2004 letter, Dr. Suber opined that “the relationship between his current condition and that of the original injury is one of an exacerbation of symptomatology relating to the injury, affecting the findings above.” In a December 17, 2004 letter, Dr. Suber noted that magnetic resonance imaging (MRI) scans showed worsening spinal stenosis from November 2002 to February 7, 2004.⁷ He noted continuing right upper extremity symptoms in a January 26, 2005 note and diagnosed degenerative joint disease and a history of tendinitis.

In an April 5, 2004 report, Dr. Volker K. H. Sonntag, an attending Board-certified neurosurgeon, noted a history of back and leg pain for several years. Dr. Sonntag diagnosed lumbar stenosis from L3-5 and herniated discs at C5-7.

In an October 4, 2004 report, Dr. Ankur Patel, an attending osteopath, diagnosed chronic pain syndrome.

In October 9 and 11, 2004 reports, Dr. David Herbert, an attending Board-certified anesthesiologist specializing in pain management, noted a history of the 1987 occipital and cervical injury. He diagnosed degenerative cervical changes and spinal stenosis. He noted work restrictions through February 7, 2005.

By decision dated and finalized March 7, 2005, the Office hearing representation affirmed the March 22, 2004 decision, finding that appellant had not submitted sufficient rationalized medical evidence to establish a causal relationship between the March 26, 1999 lumbar strain and the claimed recurrence of disability. The Office hearing representative found that Dr. Suber did not “provide any rationale to support his opinion that [appellant’s] underlying conditions were exacerbated by the March 1999 work injury.” The hearing representative further found that Dr. Sonntag’s opinion was of diminished probative value as he provided an incomplete history of injury. The hearing representative noted that, as appellant attributed his back condition to new work factors in December 2003, he “should consider filing a new occupational illness claim.” The hearing representative further found that appellant did not submit sufficient evidence to establish that he also sustained a shoulder injury when struck by the mail cart on March 26, 1999.

LEGAL PRECEDENT -- ISSUE 1

As used in the Federal Employees’ Compensation Act,⁸ the term “disability” means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁹ A recurrence of disability is defined by Office regulations as an inability to work, caused by a spontaneous change in a medical condition resulting from a previous injury

⁷ An October 16, 1991 cervical MRI scan showed “[b]orderline congenital spinal canal stenosis.” A November 20, 2002 lumbar MRI scan showed disc bulging with stenosis at L3-5, and disc bulging at L2-3 and L5-S1. A December 2, 2003 MRI scan of the cervical spine showed congenital stenosis, disc extrusions at C5-6 causing central spinal stenosis from C5-7 and a tiny protruding disc at C3-4. A February 7, 2004 MRI scan of the thoracic spine showed mild spondylosis with no stenosis.

⁸ 5 U.S.C. §§ 8101-8193.

⁹ *Prince E. Wallace*, 52 ECAB 357 (2001).

or illness without an intervening injury or new exposure to the work factors that caused the original injury or illness.¹⁰ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.¹¹

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹² This includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.¹³ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.¹⁴

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.¹⁵ Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.¹⁶

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a traumatic lumbar strain on March 26, 1999 when struck in the back by a mail cage. Following a return to full duty in approximately September 2001, he was again placed in light duty status as of December 2003. On February 17,

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB __ (Docket No. 03-205, issued June 19, 2003).

¹¹ Federal (FECA) Procedure Manual, Chapter 2.1500.3 (May 1997); *supra* note 2; *Donald T. Pippin*, *supra* note 10.

¹² *Albert C. Brown*, 52 ECAB 152 (2000); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

¹³ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

¹⁴ *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

¹⁵ *Conard Hightower*, 54 ECAB __ (Docket No. 02-1568, issued September 9, 2003).

¹⁶ *Albert C. Brown*, *supra* note 12.

2004 appellant filed a claim for a recurrence of disability commencing December 1, 2003 and stopped work on approximately March 12, 2004. He attributed the recrudescence of his back symptoms both to the March 26, 1999 lumbar strain and to increased job duties in December 2003. In order to prevail, appellant must demonstrate either a change in the nature and extent of his accepted lumbar strain or in his light-duty job requirements.¹⁷

Appellant submitted medical evidence regarding his condition on and after December 1, 2003. In a February 18, 2004 report, Dr. Suber, an attending Board-certified neurologist and psychiatrist, opined that the March 26, 1999 injury exacerbated preexisting, nonoccupational spinal stenosis, spondylosis, degenerative joint disease and discogenic disease. In a March 12, 2004 report, Dr. Suber explained that the “relationship between [appellant’s] current condition and that of the original injury [was] one of an exacerbation of symptomatology relating to the injury....” However, Dr. Suber did not explain how and why the March 26, 1999 lumbar strain would influence appellant’s medical condition on and after December 1, 2003. As his opinion lacks medical rationale, it is of insufficient probative value to establish the causal relationship asserted.¹⁸ Also, Dr. Suber did not find appellant totally disabled for work at any time on or after December 1, 2003.

In a December 17, 2004 letter, Dr. Suber opined that appellant’s spinal stenosis had worsened from 2002 to 2004. However, the Office did not accept spinal stenosis as work related. Thus, Dr. Suber did not find an objective worsening of appellant’s accepted lumbar strain. He noted the progression of congenital or nonoccupational spinal stenosis. Therefore, the Board finds that Dr. Suber’s reports provided insufficient rationale to support a change in the nature and extent of appellant’s injury-related conditions commencing December 1, 2003.¹⁹ Thus, appellant has not submitted sufficient medical evidence to establish a change in the nature and extent of his accepted conditions commencing December 1, 2003.

Appellant also submitted reports dated from April 5 to October 11, 2004 from Dr. Sonntag, an attending Board-certified neurosurgeon, Dr. Herbert, an attending Board-certified anesthesiologist and Drs. Downing and Patel, attending osteopaths. These physicians diagnosed spinal stenosis and chronic pain syndrome. However, they did not provide a history of the March 26, 1999 injury in their reports. Thus, their opinions are of little value in establishing appellant’s claim for a recurrence of disability as they are based on an incomplete factual history.²⁰

Alternatively, appellant alleged a change in the nature and extent of his light-duty position due to an increased mail volume in December 2003. However, appellant did not provide any evidence quantifying these changes. Thus, appellant submitted insufficient evidence to establish a change in the nature and extent of his light-duty job assignment such that he could no longer perform it as of December 1, 2003. Also, appellant’s assertions regarding additional

¹⁷ See *supra* note 12.

¹⁸ *Beverly A. Spencer*, 55 ECAB ____ (Docket No. 03-2033, issued May 3, 2004).

¹⁹ *Albert C. Brown*, *supra* note 12.

²⁰ *Patricia J. Glenn*, *supra* note 14.

causative work factors in December 2003 may have broken the legal chain of causation stemming from the March 26, 1999 injury.

Accordingly, the Board finds that the arguments and evidence submitted by appellant in support of his claim are insufficient to establish that he sustained a recurrence of total disability as alleged.

LEGAL PRECEDENT -- ISSUE 2

When an employee claims a new injury or condition causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the newly alleged condition and any related period of disability are causally related to the accepted injury. It is not sufficient merely to establish the presence of a condition. In order to establish his or her claim, appellant must also submit rationalized medical evidence, based on a complete and accurate factual and medical background, showing a causal relationship between the employment injury and the claimed conditions.²¹ Causal relationship is a medical issue.²² The medical evidence required to establish a causal relationship, generally, is medical opinion evidence,²³ of reasonable medical certainty,²⁴ supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²⁵ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's belief of causal relation unsupported by the medical record.²⁶

ANALYSIS -- ISSUE 2

Appellant asserted that he sustained a shoulder injury in the March 26, 1999 incident. Therefore, he has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between the accepted March 26, 1999 lumbar strain and the claimed shoulder injury.²⁷

Dr. Suber noted the onset of "neck and shoulder" pain in May 2002, which appellant attributed to an unspecified "industrial incident." In a February 18, 2004 report, Dr. Suber stated that according to unspecified reports, appellant "injured his shoulders" in the March 26, 1999 incident. In an August 13, 2003 report, Dr. Jackson, an attending osteopathic physician Board-certified in physiatry, noted a painful range of shoulder motion with no objective findings and

²¹ See *Armando Colon*, 41 ECAB 563 (1990).

²² *Mary J. Briggs*, 37 ECAB 578 (1986).

²³ See *Naomi Lilly*, 10 ECAB 560, 572-73 (1959).

²⁴ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

²⁵ See *William E. Enright*, 31 ECAB 426, 430 (1980).

²⁶ See *supra* note 14.

²⁷ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

diagnosed multiple myalgias and arthralgias. However, neither Dr. Suber nor Dr. Jackson provided medical rationale explaining how or why the March 26, 1999 incident would cause the claimed shoulder condition. In the absence of such rationale, their opinions are of greatly diminished probative value in establishing causal relationship and are insufficient to meet appellant's burden of proof.²⁸

Therefore, appellant has not established that he sustained a shoulder injury on March 26, 1999 as alleged as he submitted insufficient rationalized medical evidence to establish the requisite causal relationship.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability as alleged as he submitted insufficient rationalized medical evidence to establish that the accepted traumatic lumbar strain would cause any disability for work on and after February 17, 2004. The Board further finds that appellant submitted insufficient rationalized medical evidence to establish that he sustained a shoulder injury in the performance of duty on March 26, 1999.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated and finalized March 7, 2005 is affirmed.

Issued: October 12, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

²⁸ *Beverly A. Spencer*, 55 ECAB ____ (Docket No. 03-2033, issued May 3, 2004).